

REMARKS

Claims 3 - 20 are pending in the application. Concurrently filed herewith is a petition for a three-month extension of the period in which to respond to the Final Office Action dated November 12, 2004, to expire May 12, 2005.

Correction of Antecedent Basis in Claim 20

The examiner stated that " first longitudinal side and second longitudinal side" in line 6 of claim 20 lacks antecedent basis. The applicant respectfully amends claim 20 to resolve same.

Traverse Of Lack Of Antecedent Basis In Specification

The examiner stated that "a first side of the first rail and the second rail" in lines 8 - 10 of claim 10 lacks antecedent basis. The applicant respectfully traverses.

A page 7, line 21 through page 8, line 1, the specification states that "[e]ach side rail 13, 14 defines a lower side edge 25 and upper side edge 26 which side edges abut against a face of the pickets 16 (see Fig. 3) ..." Accordingly, the pickets are disposed substantially perpendicular to horizontal on a first side of the first rail and the second rail as recited in the claim.

Amendment To Claims To Recite "Fence Panel"

Claim 20 and claim 3 are amended to recite "fence panel" and therefore amendments to the claims 4 - 11 and to line 2 in claim 20 are not necessary.

Amendment to Claim 12

Responsive to the objection by the examiner, the applicant amends line 9 in claim 12 to change "the edge" to --the first side edge or the second side edge--.

Discussion

Counsel has attempted to draft claims that clearly and distinctly set forth the subject matter of the claimed invention, and submits the following discussion to assist with the evaluation of the claims. The examiner's comments at page 11 - 12 indicate the examiner is reading the term "side edges" in the claims as lateral side edges of the rails, e.g., when referring to "first side edge" and "second side edge" of the respective first and second rails (see claim 20 above). The examiner states, "Thus the rails are fastened on either side edge."

However, as recited in claim 20, the first side edge and second side edge in the claimed invention are "spaced apart relative to a terrain surface". The first and second side edges are thus vertically spaced, not horizontally, and are either a lower side edge of the rail and an upper side edge of the rail OR the upper side edge of the rail and the lower side edge of the rail, respectively relative to the terms "first" and "second". Nevertheless, the first and second side edges are spaced apart relative to the terrain as recited in the claims.

Hinkle shows in Fig. 5 the rail attached to a picket on the lateral horizontally spaced sides of the picket, for all pickets in the sequence of pickets. This is in distinct contrast to the invention as claimed which requires the "first and second side edges" to be not only spaced relative to the terrain but that the two outside pickets attach to the rails at the first side edge and the inner pickets attach to

the rails at the opposing second side edge. This structure is not shown in *Hinkle*, and the rejection of the claims should be withdrawn.

Interview Requested

The applicant welcomes an in-person interview with the examiner for the purpose of demonstrating an embodiment of the present invention and an embodiment of the fence panel in *Hinkle*, and to clarify other questions if any with the examiner.

Amendments To The Drawings

The unsigned respectfully requests deferral of the requirement for formal drawings.

Amendment To The Abstract

The unsigned respectfully requests deferral of the requirement for amendments to the abstract.

Summary

In summary, it is believed that the present amendment responds fully to the issues outstanding in this application and that claims 3 - 20 (amended) are in condition for allowance, and same is earnestly solicited.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Carl M. Davis II', with a stylized flourish at the end.

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